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November 22, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 11, 2005

Case Number: TSO-0241

This decision concerns the eligibility of XXX XXX XXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an Individual who has been diagnosed with alcohol dependence. The Individual has disputed this diagnosis, claiming instead that he suffers from alcohol abuse. Transcript of Hearing Case Number TSO-0241 (Tr.) at 5-6.

The events leading to this proceeding began when the Local Security Organization (LSO) received information indicating that the Individual had been arrested on at least six occasions for alcohol-related offenses. A personnel security interview (PSI) of the Individual was conducted. The Individual was then asked to submit to an examination by a DOE Psychiatrist. On July 30, 2004, a DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security case file. On August 18, 2004, the DOE Psychiatrist issued a report in which he stated that the Individual met the criteria for alcohol dependence, as set forth in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR). DOE Psychiatrist's Report of Examination at 29-30. The DOE Psychiatrist, noting that the Individual was still drinking and had never sought counseling or treatment for his substance-related disorders, further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his substance-related disorders.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j) (Criterion J). The Notification Letter also alleges that the Individual has: "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h) (Criterion H). The Individual filed a request for a hearing. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer. At the hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented no witnesses. The Individual, however, testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

The Individual disputes the DOE Psychiatrist's diagnosis of alcohol dependence. However, the Individual admits he suffers from Alcohol Abuse. The Individual has not submitted any significant evidence in support of his assertion that he suffers from alcohol abuse instead of alcohol dependence. I am therefore convinced that the DOE Psychiatrist's diagnosis of alcohol dependence is appropriate.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No.*

VSA-0154), 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in deciding whether the Individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, the only issue before me is whether the Individual has submitted sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by his substance related disorder. After considering all of the evidence in the record, I find that he has not.

In his Report, the DOE Psychiatrist contended that, in order to establish *rehabilitation* from his substance related disorder, the Individual must:

Produce documented evidence of attendance at Alcoholics Anonymous (AA) with a sponsor and working on the 12 steps at least once a week, for a minimum of 100 hours over at least a year's time and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of [two] years.

Psychiatrist's Report at 23. In his Report, the DOE Psychiatrist further contended that, in order to establish *reformation* from his substance-related disorder, the Individual must

Satisfactorily complete a professionally run, alcohol treatment program, either inpatient or outpatient, including aftercare, for a minimum of six months and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of two years.

Psychiatrist's Report at 23.

At the hearing, the Individual candidly admitted that he was not reformed or rehabilitated. Tr. at 6-8. The Individual forthrightly admitted that he had his last drink within the week prior to the hearing. Tr. at 8. Given these facts, it is clear that the Individual is neither reformed nor rehabilitated from his alcohol disorder.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria J and H. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: November 22, 2005